



SEP 21 2001

UNITED STATES PATENT AND TRADEMARK OFFICE

7

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Evenson, McKeown, Edwards & Lenahan
1200 G Street, N.W., Suite 700
Washington, DC 20005

In re Application of KUEHL
U.S. Application No.: 09/214,069
Int. Application No.: PCT/EP97/02753
Int. Filing Date: 28 May 1997
Priority Date: 26 June 1996
Attorney Docket No.: 225/44905
For: LIMITED-OPENING DOOR HINGE

DECISION

This is in response to applicant's "Petition Under 37 CFR 1.137(a) and 37 CFR 1.181 to Withdraw Holding of Abandonment Based on Failure to Receive Office Action" filed 07 May 2001.

BACKGROUND

On 28 May 1997, applicant filed international application PCT/EP97/02753, which claimed priority of an earlier Germany application filed 26 June 1996. A copy of the international application was communicated to the USPTO from the International Bureau on 31 December 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 26 November 1997, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 December 1998 (26 December 1998 was a Saturday).

On 28 December 1998, applicant filed national stage papers in the United States. The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 23 July 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed along with a surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 06 March 2000, the PCT Legal Office of the USPTO mailed a communication which indicated that the present international application is abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 25 May 2000, applicant filed an executed declaration along with the surcharge under 37 CFR 1.492(e).

On 05 April 2001, the PCT Legal Office mailed a communication which again indicated that the present application is abandoned.

On 07 May 2001, applicant filed the present petition to withdraw the holding of abandonment. The petition states that applicant never received the Notification of Missing Requirements. The petition further states that it is accompanied by a copy of a docket record which shows the absence of a response due to the USPTO for a Notification of Missing Requirements.

On 18 July 2001, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

DISCUSSION

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicants' representative has provided the required statement.

With regard to item (2) above, applicants' representative has provided the required statement.

With regard to item (3) above, applicants' representative has submitted a docket record which according to the petition lists all firm responses due to the USPTO on 23 August 1999. The docket record indicates the absence of any response due to a Notification of Missing Requirements for the present application on 23 August 1999.

Having satisfied items (1), (2), and (3), applicants have established with reasonable certainty that the Notification of Missing Requirements mailed 23 July 1999 was not received.

CONCLUSION

For the reasons above, the petition is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 18 July 2001 is hereby VACATED.

The application has an International Filing Date of 28 May 1997 and a date under 35 U.S.C. 371 of 25 May 2000.

The application is being forwarded to the DO/EO/US for processing in accordance with this decision.



Bryan Tung
PCT Legal Examiner
PCT Legal Office

Telephone: 703-308-6614

Facsimile: 703-308-6459